

# ADOPTED REGULATION OF THE LOCAL GOVERNMENT

## EMPLOYEE-MANAGEMENT RELATIONS BOARD

LCB File No. R043-13

Effective June 23, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-18, NRS 288.110.

A REGULATION relating to local government employees; revising provisions governing practice and procedure before the Local Government Employee-Management Relations Board; removing certain requirements relating to elections of exclusive bargaining agents; and providing other matters properly relating thereto.

### Legislative Counsel's Digest:

Existing law authorizes the Local Government Employee-Management Relations Board to make rules governing proceedings before the Board. (NRS 288.110) **Section 1** of this regulation authorizes the Board to order the parties in a proceeding before the Board to participate in a settlement conference under certain circumstances upon its own motion or the motion of a party. **Sections 4 and 5** of this regulation amend existing regulations so that a complaint and an answer filed with the Board are no longer required to be verified or sworn. **Sections 6 and 11** of this regulation require that the parties attach a certificate of service, instead of an affidavit of service, to each opposition or response and each brief not made during a hearing. **Section 7** of this regulation limits the discussion of proposed exhibits during a prehearing conference to those exhibits exchanged by the parties at least 5 days before the date of the prehearing conference. **Section 8** of this regulation authorizes the Board to limit the time available to each party for an oral argument and, in such a case, provides for each party to have an equal amount of time for oral argument. **Sections 9 and 10** of this regulation provide that the presiding officer, rather than the entire Board, is responsible for ruling on the admissibility of evidence. **Sections 12 and 13** of this regulation amend the deadlines for the filing of a petition for rehearing and for the Board to rule on such a petition. **Section 14** of this regulation specifies that a modifying order is considered to be final for the purposes of judicial review. **Section 15** of this regulation requires a response to a petition for a declaratory order to contain a memorandum of authorities. **Section 15** also authorizes a party requesting a petition for a declaratory order to file a reply to such a response. **Section 16** of this regulation removes the requirement that a petitioner who desires a hearing on a petition for a declaratory order establish factual assertions by affidavit. **Section 16** also requires a request for such a hearing to be filed within a certain time period and prohibits the parties from filing prehearing statements unless such a request is granted. **Section 17** of this regulation removes authorization for the Board to issue a declaratory order without holding a hearing on a petition that has been opposed under certain circumstances.

Existing law also authorizes the Board to make rules governing the recognition of employee organizations. (NRS 288.110) If the Board doubts that an employee organization is supported by a majority of the local government employees in a particular bargaining unit, existing law authorizes the Board to conduct an election to determine the exclusive bargaining agent of the employees in that unit. (NRS 288.160) **Section 2** of this regulation amends existing regulations so that the Board is no longer required to conduct a runoff election if such an election is inconclusive.

**Section 1.** Chapter 288 of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. Except as otherwise provided in subsection 3, the Board may order the parties to participate in a settlement conference upon the motion of any party or its own motion.*
- 2. The Commissioner shall conduct any settlement conference ordered by the Board pursuant to subsection 1.*
- 3. The Board will not order a settlement conference for any matter that is:*
  - (a) An appeal of the determination of a bargaining unit brought pursuant to subsection 5 of NRS 288.170;*
  - (b) A proceeding relating to an application for the recognition of an employee organization filed pursuant to NRS 288.160; or*
  - (c) A proceeding commenced upon a petition for a declaratory order filed pursuant to NAC 288.380.*
- 4. A party or the Board may file a motion for a settlement conference at any time:*
  - (a) After all parties have submitted prehearing statements pursuant to NAC 288.250; and*
  - (b) Not later than 60 days before the date of a scheduled hearing.*
- 5. The Commissioner may establish reasonable guidelines to conduct a particular settlement conference, except that the Commissioner may not:*

*(a) Require the parties to submit additional statements or briefs in advance of a settlement conference; or*

*(b) Establish guidelines that will impose any undue expense on a party.*

*6. The Commissioner may not be called as a witness in any proceeding in which a settlement conference has taken place.*

**Sec. 2.** NAC 288.110 is hereby amended to read as follows:

288.110 1. All elections conducted in accordance with subsection 4 of NRS 288.160 will be conducted under the supervision of the Board or its agent.

2. Any party may be represented at the election by observers selected in accordance with such limitations as the Board may prescribe.

3. Any observer or the Board's agent conducting the election may challenge for good cause the eligibility of any person to vote in the election. The ballots of challenged persons will be impounded.

4. Upon the conclusion of the election, the ballots will be counted in the presence of the parties or their observers and the Board's agent conducting the election. The agent will furnish parties with a tally of the ballots.

5. Except as otherwise provided in this subsection, the ballots must be kept for at least 6 months after an election, after which period the ballots may be destroyed. If a timely objection to the election is filed with the Board or a petition for judicial review concerning the election is filed in district court, the ballots must be kept until after the conclusion of any Board or court proceeding concerning the election.

6. Provisions may be made for a nonunion vote and for linguistic assistance.

7. If the results are inconclusive, the Board ~~will~~ *may* conduct a runoff election.

8. Within 5 days after the election, any party may file with the Board objections to the conduct of the election or conduct affecting the results of the election. The objections must be in writing and contain a brief statement of facts upon which the objections are based. A sworn original and four copies of the objections must be signed and filed with the Board. The party filing the objections shall serve a copy upon each of the other parties.

9. If challenges which affect the results of the election or objections raise a substantial question which cannot be resolved without a hearing, the Board may issue and serve notice of a hearing on these issues.

10. An employee organization will be considered the exclusive bargaining agent for employees within a bargaining unit, pursuant to an election, if:

- (a) Challenged ballots are insufficient in number to affect the results;
- (b) No runoff election is to be held;
- (c) No timely objections are filed; and
- (d) The election demonstrates that the employee organization is supported by a majority of the employees within the particular bargaining unit.

**Sec. 3.** NAC 288.130 is hereby amended to read as follows:

288.130 If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the Board in accordance with the provisions of NAC 288.200 to 288.375, inclusive ~~§~~, *and section 1 of this regulation.*

**Sec. 4.** NAC 288.200 is hereby amended to read as follows:

288.200 1. In addition to any other applicable requirements set forth in NAC 288.231, a complaint must include:

- (a) The full name and address of the complainant;

- (b) The full name and address of the respondent;
- (c) A clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS, including the time and place of the occurrence of the particular acts and the names of persons involved; and
- (d) The legal authority under which the complaint is made.

2. The complainant shall file ~~fa-verified~~ *an* original and four copies of the complaint with the Board in the form of a pleading and shall serve a copy by certified mail on all parties in interest at their last known addresses.

**Sec. 5.** NAC 288.220 is hereby amended to read as follows:

288.220 1. The respondent may file an answer in the form of a pleading and not later than 20 days after the receipt of a complaint.

2. The answer must contain a clear and concise statement of the facts which constitute a defense. The respondent must specifically admit, deny or explain each of the allegations in the complaint unless he or she is without knowledge, in which case the respondent shall so state and the statement shall be deemed a denial. Any allegation in the complaint not specifically denied in the answer, unless it is stated in the answer that the respondent is without knowledge, shall be deemed to be admitted to be true.

3. If an answer is not made within the prescribed time, the dilatory party is precluded, except with the consent of the opposing party or the Board, from asserting any affirmative defense in the proceeding.

4. ~~A-sworn~~ *An* original and four copies of the answer must be signed and filed with the Board.

**Sec. 6.** NAC 288.240 is hereby amended to read as follows:

288.240 1. Any request for an order by the Board, except for an order to permit intervention, concerning any matter that has been assigned a case number and that has not been finally decided by the Board must be styled a “motion.”

2. All motions made before or after a hearing must be filed in writing with the Board. Motions made at a hearing must be stated orally and must be included in the stenographic report of the hearing.

3. A motion directed at a complaint or petition must be written and filed before the answer or response is due.

4. Within 10 days after service of any motion, all parties wishing to respond to the points raised in the motion shall file their opposition to the motion. That opposition must be in writing, unless made during the hearing. Within 10 days after service of the opposition to the motion, the moving party may respond to the points raised in the opposition.

5. ~~[An affidavit]~~ *A certificate* of service must be attached to the original opposition or response, indicating that the opposition or response has been served on the opposing party, unless the opposition or response is made during a hearing.

6. If a party fails to file and serve a written opposition to a motion, that failure to respond may be construed as an admission that the motion is meritorious and as consent to granting the motion.

**Sec. 7.** NAC 288.273 is hereby amended to read as follows:

288.273 1. The Board or Commissioner may, upon written notice to all parties of record, hold a prehearing conference to:

- (a) Formulate or simplify the issues;
- (b) Obtain admissions of fact which will avoid unnecessary proof;

(c) Discuss *any* proposed exhibits which ~~[should have been previously]~~ *were* exchanged between the parties ~~[;]~~ *at least 5 days before the date of the prehearing conference;*

(d) Limit the number of witnesses; and

(e) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.

2. Upon action of the Board, the action taken and the agreements made at a prehearing conference by the parties concerned must be made a part of the record. When so ordered, the action controls the course of subsequent proceedings unless modified by the Board at the hearing.

3. In any proceeding, the Board may call all parties together for a conference before the taking of testimony or may recess the hearing for a conference to carry out the intent of this section. The Board will state on the record the results of the conference.

**Sec. 8.** NAC 288.306 is hereby amended to read as follows:

288.306 *1.* The Board may, following the filing of briefs or upon contested motions ~~[, set]~~ *:*

*(a) Set* the matter for oral argument upon 10 days written notice to each party of record, unless the Board considers a shorter time advisable ~~[;]~~ *; and*

*(b) Limit the amount of time available to each party for oral argument.*

*2. If the Board limits the amount of time available for oral argument pursuant to subsection 1, the Board will allow each party an equal amount of time for oral argument.*

**Sec. 9.** NAC 288.322 is hereby amended to read as follows:

288.322 *1.* In conducting any investigation, inquiry or hearing, the Board ~~[is]~~ *and the presiding officer are* not bound by the technical rules of evidence, and no informality in any

proceeding or in the manner of taking testimony will invalidate any order or decision of the Board ~~[ ]~~ *or the presiding officer*. The rules of evidence of courts of the State will be generally followed but may be relaxed at the discretion of the presiding officer or Board when deviation from the technical rules of evidence will aid in ascertaining the facts.

2. An objection to the admissibility of evidence may be made by any party of record and the objection will be ruled on by the ~~[Board, ]~~ *presiding officer*. When an objection is made to the admission or exclusion of evidence, the grounds upon which the relief is sought must be stated briefly. The ~~[Board, ]~~ *presiding officer*, either with or without objection, may exclude inadmissible, incompetent, repetitious or irrelevant evidence.

3. Any evidence offered at the hearing must be material and relevant to the issues of the hearing.

4. An offer of proof for the record must consist of a statement of the substance of the evidence to which an objection has been sustained.

**Sec. 10.** NAC 288.328 is hereby amended to read as follows:

288.328 The ~~[Board]~~ *presiding officer* will rule on the admissibility of all evidence subject to the provisions of NAC 288.324 and 288.326. At the conclusion of the hearing, all evidence will be received into the record subject to the rulings of the ~~[Board]~~ *presiding officer* on evidence to which timely objection was made.

**Sec. 11.** NAC 288.345 is hereby amended to read as follows:

288.345 In any proceeding the presiding officer may order briefs to be filed within a reasonable time. An original and four copies of each brief must be filed with the Board and must be accompanied by ~~[an acknowledgment of or an affidavit]~~ *a certificate* showing service on each party of record as provided in NAC 288.200.



**Sec. 12.** NAC 288.360 is hereby amended to read as follows:

- 288.360 1. Either party may, within ~~{10}~~ **15** days after ~~{any}~~ ***service of a final*** decision ~~{by}~~ ***of*** the Board, file a petition for a rehearing stating the reasons therefor.
2. The Board may order a rehearing by requiring the parties to submit any additional evidence or data in support of their respective positions. The Board will not require the repetition of evidence or data previously submitted. Further proceedings and deliberations will be conducted in accordance with the provisions of this chapter.
3. The failure of either party to submit a petition for rehearing within ~~{10}~~ **15** days constitutes an agreement that the Board's decision is a final decision for the purposes of NRS 233B.130.

**Sec. 13.** NAC 288.364 is hereby amended to read as follows:

- 288.364 1. The Board will consider a ***timely*** petition for rehearing and may grant or deny it ~~{within 20 days after the date of its filing.}~~ ***not later than 5 days before the date of the expiration of the time frame to file a petition for judicial review set forth in NRS 233B.130.*** If no action is taken by the Board within the time specified, the petition shall be deemed denied.
2. If the Board grants the petition for rehearing, its order granting rehearing will state the issues upon which the petition has been granted. The Board may request the filing of briefs by the parties on issues raised by the petition. No evidence will be taken nor will any hearing be held under this section.
3. After reconsidering the issues, the Board, if it is of the opinion that the original order or decision is in any respect unjust, unwarranted, unlawful or in need of change, may abrogate, change or modify the decision, the order or both.
4. A decision will be rendered within 45 days after granting a petition for rehearing.

**Sec. 14.** NAC 288.368 is hereby amended to read as follows:

288.368 1. Any order modifying a decision or order of the Board issued pursuant to NAC 288.364 incorporates those portions of the prior order or decision which have not been changed or modified by the subsequent order.

2. For purposes of ~~[appeal]~~*judicial review*, a modifying order is to be considered the final order of the Board.

**Sec. 15.** NAC 288.390 is hereby amended to read as follows:

288.390 1. Any party served with a petition for a declaratory order may respond to the petition within 20 days by filing the original and four copies of his or her sworn response with the Board. The responding party shall also serve a copy of the response upon the petitioner.

2. The response must include:

- (a) The full name and address of the petitioner;
- (b) The full name and address of the respondent;
- (c) A clear and concise statement of the facts, including the time and place of the occurrence of the particular acts described in the petition and the names of persons involved; and
- (d) ~~[The legal authority under which the response is made.]~~ *A memorandum of authorities, including legal authorities in support of or in opposition to any position or contention raised by the petitioner.*

*3. A party requesting a petition for a declaratory order may file a reply to any response filed pursuant to this section within 10 days after the date on which the response is served.*

**Sec. 16.** NAC 288.400 is hereby amended to read as follows:

288.400 *1.* Any petitioner who desires a hearing on a petition for a declaratory order shall set forth in detail in his or her request the reason why the matters alleged in the petition and the

supporting affidavits or other written evidence in briefs or memorandum of legal authorities do not permit the fair and expeditious disposition of the petition . ~~[and, if a request for hearing is dependent upon factual assertions, shall, by affidavit, establish those facts.]~~

*2. A request for a hearing filed pursuant to this section must be filed within 20 days after service of any response to the petition. Failure to file a request for a hearing may be construed as consent for the Board to issue a declaratory order without holding a hearing.*

*3. The parties shall not file the prehearing statements which are otherwise required by NAC 288.250 unless a request for a hearing filed pursuant to this section is granted by the Board.*

**Sec. 17.** NAC 288.410 is hereby amended to read as follows:

288.410 1. The Board may, for good cause, refuse to issue a declaratory order if:

(a) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future;

(b) The petitioner's interest is not of the type which would give him or her standing to maintain an action if the petitioner were to seek judicial relief;

(c) The issuance of the declaratory order may adversely affect the interest of the Board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise; or

(d) The matter is not within the jurisdiction of the Board.

2. The Board will consider each petition submitted for a declaratory order and will, within a reasonable time after the submission:

(a) Deny the petition in a written statement containing the Board's reasons for the denial;

(b) Set the matter for hearing and proceed according to NAC 288.280 to 288.370, inclusive;

or

(c) Issue a declaratory order on the matters contained in the petition.

3. ~~[The Board may issue a declaratory order without holding a hearing on a petition which has been opposed if all of the legal issues raised by the petition have been previously decided by the Board and the Board adopts its previous decision or decisions as precedent.~~

~~—4.]~~ The Board may order a hearing on an unopposed petition for a declaratory order if it is in the best interests of those who may be affected by the order.

**Sec. 18.** NAC 288.366 is hereby repealed.

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### TEXT OF REPEALED SECTION

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**288.366 Rehearings: Effect of filing or granting. (NRS 288.110)** Except as otherwise ordered by the Board, no filing of a petition for rehearing or granting of the petition excuses compliance with or otherwise suspends the effectiveness of the final decision or order upon which the petition for rehearing was filed.